

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY


(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

REC'D 09 DEC 2005

WIPO

PCT

| | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|-------------------------------------------------------------------------------|-----------------------|
| Applicant's or agent's file reference MJL/C277.1/0 | FOR FURTHER ACTION | | See Form PCT/IPEA/416 |
| International application No. PCT/GB2004/005136 | International filing date (day/month/year) 10.12.2004 | Priority date (day/month/year) 13.12.2003 | |
| International Patent Classification (IPC) or national classification and IPC C12Q1/533 | | | |
| Applicant OXOID LIMITED et al. | | | |
| <p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 6 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p style="margin-left: 20px;">a. <input checked="" type="checkbox"/> <i>sent to the applicant and to the International Bureau</i> a total of 2 sheets, as follows:</p> <p style="margin-left: 40px;"><input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p style="margin-left: 40px;"><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p style="margin-left: 20px;">b. <input type="checkbox"/> <i>(sent to the International Bureau only)</i> a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p> | | | |
| <p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input checked="" type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p> | | | |
| Date of submission of the demand 12.05.2005 | | Date of completion of this report 08.12.2005 | |
| Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465 | | Authorized Officer Pellegrini, P Telephone No. +49 89 2399-5729 | |



**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/GB2004/005136

Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

Description, Pages

1-15 as originally filed

Claims, Numbers

1-18 filed with telefax on 18.11.2005

Drawings, Sheets

1/1 as originally filed

☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to sequence listing (*specify*):

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/GB2004/005136

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:
- ☐ the entire international application,
 - ☒ claims Nos. 17,18
- because:
- ☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (specify):
 - ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
 - ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
 - ☒ no international search report has been established for the said claims Nos. 17,18
 - ☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:
 - the written form ☐ has not been furnished
 - ☐ does not comply with the standard
 - the computer readable form ☐ has not been furnished
 - ☐ does not comply with the standard
 - ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions.
 - ☐ See separate sheet for further details

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/GB2004/005136

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

| | | |
|-------------------------------|-------------|------|
| Novelty (N) | Yes: Claims | 1-16 |
| | No: Claims | |
| Inventive step (IS) | Yes: Claims | 1-16 |
| | No: Claims | |
| Industrial applicability (IA) | Yes: Claims | 1-16 |
| | No: Claims | |

2. Citations and explanations (Rule 70.7):

see separate sheet

Re Item III

Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. No search has been carried out for claims 17 and 18, consequently no assessment of novelty, inventive step and industrial applicability has been provided for such claims.

Re Item V

Reasoned statement with regard to novelty, inventive step and industrial applicability; citations and explanations supporting such statements

1. The filed amendments meet the requirements of Art.34(2)(b) PCT.
2. Reference is made to the following document:

D1: US-A-5 716 799 (RAMBACH ET AL) 10 February 1998.

3. Claims 1-16 are novel (Art.33(2) PCT).

The cited prior art does not disclose a medium comprising a chromogen, a carbohydrate in the range 1-5 g/l, and an alcohol, such that the chromogen is hydrolysed by a *Candida* yeast to generate a chromogen of a derived colour which is different from the colour produced in a standard medium (as defined by claim 1).

4. Independent claim 1 is inventive (Art.33(3) PCT).
 - a. D1, representing the closest prior art, discloses a medium for the selective detection of different *Candida* species, comprising a chromogen and a carbohydrate in the range 10-30 g/l, such that the chromogen is hydrolysed by a *Candida* yeast to generate a chromogen of a derived colour which is different from the colour produced in a standard medium.
 - b. The difference between claim 1 and D1 is that the carbohydrate is present in the range 1-5 g/l instead that 10-30 g/l, and an alcohol is also present. No technical

effect appear to be associated with such difference: the fact the, in the specific example described in the application (example 2), a specific embodiment of the medium broadly defined by claim 1 provides slightly better analytical determinations than the medium of D1, cannot be generalized as a better performance. The technical problem of claim 1 in view of the closest prior art is therefore to provide an alternative culture medium for the identification of *Candida* species. The solution proposed, i.e. a medium containing carbohydrate in the range 1-5 g/l and an alcohol, is inventive, as it is not suggested by the cited prior art. D1 obtains the desired effect, i.e. a colour different from the colour of a standard medium, by increasing the carbohydrate concentration. The skilled person would therefore not be motivated to decrease such concentration, as a high carbohydrate concentration is, according to D1, solely responsible for achieving the desired effect.

- 4.1. Claims 2-11, dependent on inventive claim 1, are also inventive.
- 4.2. Claims 12-16 are also inventive, as they relate to a method of detecting or identifying *Candida*, in particular *C.albicans*, making use of the inventive medium of claims 1-11.